

DEPARTMENT OF STATE REVENUE

01-20180741.ODR

**Final Order Denying Refund: 01-20180741
Income Tax
For Tax Year 2013**

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this final determination.

HOLDING

Married couple's claim for refund was filed outside of Indiana's statute of limitations. Therefore, the Department's initial denial was correct.

ISSUE

I. Income Tax—Statute of Limitations.

Authority: IC § 6-8.1-9-1; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014).

Taxpayers protest the denial of refund.

STATEMENT OF FACTS

Taxpayers are a married couple. Taxpayers filed an IT-40X on January 2, 2018, to amend their 2013 IT-40PNR. The refund that Taxpayers claimed on that IT-40X was denied by the Indiana Department of Revenue ("Department") in a letter dated January 22, 2018. That letter stated that Taxpayers' claim for refund fell outside the three year statute of limitations deadline. Taxpayers filed a protest of the refund denial, opting for a "Final determination without a hearing" on Department's "Protest Submission Form." Based upon the information in the protest file, this Order Denying Refund results. Further facts will be supplied as required.

I. Income Tax— Statute of Limitations.

DISCUSSION

As a threshold issue, the Department notes that "[w]hen [courts] examine a statute that an agency is 'charged with enforcing. . .[courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana Tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

Turning to the protest, Taxpayers' letter states in relevant part:

The taxpayers received a Notice of Proposed Assessment from the California Franchise Tax Board on 11/27/17 advising that the taxpayers could not take a credit for the income tax paid to Indiana on their 2013 California Income Tax Return. The other state tax credit in the amount of \$4,181.00 paid to Indiana, was denied. Subsequently, the taxpayers paid California the total additional tax. The taxpayers are now in the situation of paying this tax twice—once to Indiana and once to California.

The notice sent by the Franchise Tax Board came within the 4 year statute of limitations under California Tax Code, but after the 3 year statute of limitations under the Indiana Code. [. . .]

Further, Taxpayers' Power of Attorney (POA) states she "prepared and submitted an amended return to report the other state tax credit correctly on the Indiana tax return. The amended Indiana return was submitted only 2 months after the Indiana statute expired." The POA contends that the "conflict in the statute of limitations" has caused a situation where her client "is now in the position of having paid tax on the same income twice."

The Department's denial letter cites to IC § 6-8.1-9-1, noting that "a claim for refund of excess withholding or estimated payments must be filed within a 3 year period" and that "[y]our claim requesting the refund was not

received before the 3 year period had expired." IC § 6-8.1-9-1 states in pertinent part:

(a) If a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a claim for a refund with the department. Except as provided in subsections (f) and (g), in order to obtain the refund, the person must file the claim with the department within three (3) years after the later of the following:

- (1) The due date of the return.
- (2) The date of payment.

Taxpayers' POA in effect concedes that the refund claim is outside of the statute of limitations ("The amended Indiana return was submitted only 2 months after the Indiana statute expired"). Taxpayers cite to no Indiana statute, regulation, or court case that would allow Taxpayers to file a late claim for refund (in fact, IC § 6-8.1-9-1(a) says "the person must file" within the allotted timeframe).

FINDING

Taxpayers' protest is denied.

July 31, 2018

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